# United States Department of Labor
# Employees' Compensation Appeals Board

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| **C.W., Appellant** | ) | |
| **and** | ) | **Docket No. 21-0336** |
| | ) | **Issued: September 1, 2021** |
| **DEPARTMENT OF COMMERCE, U.S. CENSUS BUREAU, Bethesda, MD, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

### ***JURISDICTION***

On January 11, 2021 appellant filed a timely appeal from a December 8, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

### ***ISSUE***

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted October 1, 2020 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the December 8, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

## ***FACTUAL HISTORY***

On October 20, 2020 appellant, then a 55-year-old miscellaneous clerk, filed a traumatic injury claim (Form CA-1) alleging that on October 1, 2020, he was bitten by two dogs while he was walking from an enumeration case residence while in the performance of duty. He noted that the bites broke his skin on his left thigh and right ankle. Appellant stopped work on October 1, 2020 and returned to work on October 2, 2020. On the reverse side of the claim form, the employing establishment acknowledged that appellant was injured in the performance of duty.

In support of his claim, appellant submitted a bill for an emergency visit to the hospital.

In a development letter dated November 2, 2020, OWCP advised appellant that additional factual and medical evidence was necessary to establish his claim as no diagnosis of any condition resulting from his injury had been received. It requested that appellant submit a narrative medical report from his attending physician, which includes the physician's opinion supported by a medical explanation as to how the reported employment incident caused or aggravated the claimed injury. It afforded appellant 30 days to submit the necessary evidence.

In response, appellant resubmitted a bill for an emergency visit to the hospital. He also submitted a pharmacy receipt dated October 3, 2020 and a bill for an outpatient appointment on October 1, 2020.

By decision dated December 8, 2020, OWCP accepted that the October 1, 2020 employment incident occurred, as alleged, but denied appellant's claim, finding that he had not submitted medical evidence containing a medical diagnosis in connection with his accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,[4] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

[3] *Id*.

[4] *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[7]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.[8] Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[9] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[10]

## ***ANALYSIS***

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted October 1, 2020 employment incident.

As noted above, to establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.[11] Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[12] The evidence submitted in support of appellant's claim consists only of medical bills and a pharmacy receipt. Although they indicate that he sought treatment on the date of injury, the actual medical reports were not found in the case record. The Board has held that lay individuals are not competent to render a medical opinion.[13] Therefore, this evidence is of no probative value and insufficient to establish the claim.

[7] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[9] *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[10] *L.D.*, *id.*; *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[11] *Supra* note 8.

[12] *Supra* note 9.

[13] *E.H.*, Docket No. 19-0365 (issued March 17, 2021); *Z.S.*, Docket No. 16-1745 (issued May 18, 2017).

As there is no medical evidence of record establishing causal relationship between a medical condition and the accepted employment incident, the Board finds that appellant has not me his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

## ***CONCLUSION***

The Board finds that appellant has not met his burden of proof to establish a diagnosed condition causally related to the accepted October 1, 2020 employment incident.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the December 8, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 1, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board